



U.S. Department of Justice

United States Attorney

Eastern District of Pennsylvania

615 Chestnut Street

Suite 1250

Philadelphia, Pennsylvania 19106-4476

(215) 861-8200

FOR IMMEDIATE RELEASE

May 5, 2004

**U.S. CHARGES NEW JERSEY TOBACCO COMPANY AND CHIEF
OPERATING OFFICER WITH ILLEGALLY SHIPPING
FLAMMABLE MATERIALS**

PHILADELPHIA – United States Attorney Patrick L. Meehan today announced the filing of an Information¹ against Garden State Tobacco Company (d/b/a “H.J. Bailey Company”) and Allen S. Roth charging that, between January 1, 2000 and August 31, 2003, they unlawfully caused hazardous flammable materials, including butane gas canisters and strike matches, to be transported by FedEx and UPS approximately 10,000 times, in violation of 49 U.S.C. § 5124.

“This deliberate and long-running practice created an intolerable risk of harm to the public,” said Meehan. “On 10,000 separate occasions you had hazardous and highly flammable materials on board commercial ground carriers without any regard for the regulations designed to ensure public safety. We simply can’t tolerate a blatant disregard of the law for any reason much less for the sake of saving the company some money.”

It is alleged that defendant Garden State Tobacco Company (d/b/a “H.J. Bailey Company”) is a New Jersey corporation located at 1105 Green Grove Road in Neptune, New Jersey. Defendant Garden State Tobacco Company allegedly sells a variety of smoking related products to its customers throughout the United States, including butane gas canisters, strike matches and torch lighters, and ships these products to its customers by using ground transportation services such as Federal Express (“FedEx”) and United Parcel Service (“UPS”). According to the information, the defendant corporation, which has been in business since approximately 1934, is one of the largest distributors of Zippo brand lighters in the United States and is a major U.S. distributor of tobacco and tobacco related products, with total annual sales of more than \$35 million.

According to the information, butane gas canisters, strike matches, and torch lighters are hazardous materials that are subject to special regulations relating to, among others, their marking, labeling and packaging. The U.S. Department of Transportation's Hazardous Materials

¹An Indictment or Information is an accusation. A defendant is presumed innocent unless and until proven guilty.

Regulations regulate all persons who offer hazardous materials for interstate, foreign, and intrastate commerce and require, among other things, that any person who offers hazardous materials for transportation must declare that the materials are hazardous and ensure that the hazardous shipment is properly classified, documented, described, packaged, marked, and labeled in accordance with the regulations.

According to the information, defendants Garden State Tobacco Company and Allen S. Roth did not comply with any of the Hazardous Materials Regulations and instead routinely caused undeclared, unmarked, unlabeled and improperly packaged butane gas canisters, strike matches and torch lighters to be shipped in commerce through commercial carriers such as FedEx and UPS. The information charges that the defendants failed to train any of Garden State Tobacco Company's employees as required by federal law.

It is alleged that federal regulations require that every employer who uses one or more of its employees in connection with transporting hazardous materials in commerce must ensure that each such employee is trained in and is knowledgeable of the federal hazardous materials regulations. Federal law prohibits such employees from handling hazardous materials or preparing hazardous materials for transportation without the proper training. The information alleges that employers must also ensure that employees are tested by appropriate means on subjects such as safety training and methods and procedures for avoiding accidents and must ensure that employees receive recurrent training every three years.

The information alleges that properly declared, properly marked, and properly labeled dangerous goods communicate critical information to (a) cargo personnel loading the material on motor carriers, (b) the driver, and (c) emergency personnel responding to an accident. It is alleged that hazardous material declarations inform motor carrier personnel how to load the materials, how to segregate the materials, and at what temperatures to stow the materials. Temperature sensitive hazardous materials include flammable gases and flammable solids. In addition, flammable gases and solids must travel separately from other hazardous materials, such as corrosives. Flammable solids are readily combustible solids that may cause fire through friction.

The information alleges that FedEx and UPS are freight carriers registered by the Federal Motor Carrier Safety Administration (FMCSA), an agency of the U.S. Department of Transportation, and that each must abide by all applicable U.S. Department of Transportation regulations including the FMCSA Regulations and Hazardous Material Regulations.

It is alleged that, prior to January 1, 2000, defendant Allen S. Roth became aware that the U.S. Department of Transportation has specific regulations concerning the transportation of hazardous materials in commerce and, through his dealings with FedEx and UPS, learned that

these commercial carriers impose additional fees of approximately \$20 per shipment for packages containing hazardous materials such as butane gas canisters, torch lighters and strike matches. Despite his knowledge that the Hazardous Materials Regulations impose special requirements concerning the transportation of hazardous materials, defendant Roth allegedly decided on behalf of defendant Garden State Tobacco Company to not comply with the regulations as a cost saving measure. As a result of that decision, it is alleged that the defendants caused approximately 10,000 illegal shipments of hazardous materials, including numerous shipments to the Eastern District of Pennsylvania.

INFORMATION REGARDING THE DEFENDANTS

NAME	ADDRESS	AGE OR DATE OF BIRTH
Garden State Tobacco Company (d/b/a "H.J. Bailey Company")	1105 Green Grove Road Neptune, New Jersey 07754-0367	Incorporated in New Jersey
Allen S. Roth	41 Rozbern Eatontown, New Jersey 07724-9614	4/27/59

If convicted, defendant Garden State Tobacco Company faces 5 years probation, a fine of \$500,000 and a special assessment of \$400. If convicted, defendant Allen Roth faces 5 years imprisonment, a fine of \$250,000, 3 years of supervised release, and a special assessment of \$100.

The case was investigated by the Philadelphia area field office of the United States Department of Transportation Office of Inspector General. The U.S. Department of Transportation's Research and Special Programs Administration assisted in this investigation. The case has been assigned to Assistant United States Attorney John J. Pease for prosecution.

**UNITED STATES ATTORNEY'S OFFICE
EASTERN DISTRICT, PENNSYLVANIA
Suite 1250, 615 Chestnut Street
Philadelphia, PA 19106**

**Contact: RICH MANIERI
Public Affairs
215-861-8525**

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